

REMARKS

In the Office Action mailed on May 18, 2007, the Examiner rejected claims 26, 28-30, 36-41, 43, and 44 under 35 U.S.C. § 102(e) as allegedly being anticipated by Melvin (U.S. Patent No. 5,957,977); and rejected claim 42 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Melvin.

By this Amendment, Applicant amends claims 26 and 36. Claims 26, 28-30, and 36-44 are currently pending. Of these claims, claims 26 and 36 are independent.

Applicant respectfully traverses the Examiner's Section 102 rejection of claims 26, 28-30, 36-41, 43, and 44 over Melvin.

Amended independent claim 26 is drawn to a method of treating valvular dysfunction of an in situ valve of a heart. The claim 26 method requires, among other things, "providing a device including a single, continuous elongate member having first and second ends, a first anchor disposed at the first end, and a second anchor disposed at the second end." The method also requires "positioning the first and second anchors outside the chambers of the heart."

Amended independent claim 36 is drawn to a method of treating a heart. The claim 36 method requires, among other things, providing a tensioning device comprising, among other things, "a single, continuous elongate member having first and second ends, a first anchor disposed at the first end, [and] a second anchor disposed at the second end." The method also requires "positioning and securing [the] first and second anchors adjacent a heart wall outside the heart."

Melvin discloses a mechanical activator device that includes portions internal to the heart and portions external to the heart. As best shown in Figure 2 of Melvin, the

internal portions include an internal stint 52 that comprises a septal splint 54, a ring 56, and a ring 58. The septal splint 54 contacts and supports the septum outside of the left ventricle. The rings 56 and 58 connect to the septal splint 54 and are placed adjacent valves in the left atrium and left ventricle, respectively. The stint 52 connects to the external portion of the device via cords 86 that extend through the heart wall. Each of cords 86 includes a strand of suture with a polyester bead fused to one end and a blunt straight needle on the other end. See col. 8, lines 32-34.

Melvin further discloses that the external portion includes a yoke 70 and an activator 74, as shown in, for example, Fig. 5A. The yoke 70 is placed around the exterior surface of the heart and attaches to the activator 74. The activator 74 includes a hydraulic arm 75 and bands 84 secured to the yoke 70. Arm 75 attaches to a pump P for controlling fluid volume in arm 75 to alter the shape of arm 75.

In the Office Action, the Examiner contends that the polyester beads disclosed by Melvin correspond to the claimed first and second anchors. Applicant respectfully disagrees with this contention. Even assuming that the disclosed polyester beads and structure of the Melvin mechanical activator device meet the other recitations of independent claims 26 and 36, which Applicant does not concede, Melvin fails to disclose, teach, or otherwise suggest “providing a device including a single, continuous elongate member having first and second ends, a first anchor disposed at the first end, and a second anchor disposed at the second end,” and “positioning the first and second anchors outside the chambers of the heart,” as required by amended independent claim 26. Melvin also fails to disclose, teach, or otherwise suggest providing a tensioning device comprising, among other things, “a single, continuous elongate member having

first and second ends, a first anchor disposed at the first end, [and] a second anchor disposed at the second end,” and “positioning and securing [the] first and second anchors adjacent a heart wall outside the heart,” as required by amended independent claim 36. Instead, Melvin discloses that each polyester bead is connected to one end of a cord 86, with the other end of each cord 86 being connected to internal stint 52. See Fig. 2 and col. 8, lines 32-40. Indeed, Melvin includes no disclosure, teaching, or suggestion of a single, continuous elongate member extending between two polyester beads.

For at least these reasons, Applicant respectfully requests the reconsideration and withdrawal of the Examiner’s Section 102 rejection over Melvin, and the allowance of claims 26 and 36 and their dependent claims.

Applicant respectfully traverses the Examiner’s Section 103 rejection of claim 42 over Melvin. Even assuming that it would have been obvious to modify the Melvin reference in the manner alleged by the Examiner, which Applicant does not concede, the alleged modification fails to overcome the shortcomings of Melvin discussed above. Therefore, claim 42 is allowable at least due to its dependence from claim 36.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, and drawings in this Amendment, it is to be understood that Applicant is in no way intending to limit the scope of the claims to an exemplary embodiment described in the specification or abstract and/or shown in the

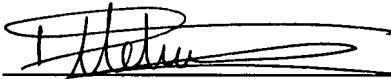
drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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